

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

Wilson McCarthy and Henry Swan, Trustees.

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad Company that a position of Agent Telegrapher be bulletined covering Sunnyside, Utah, as provided for in Rule 25 of the agreement in effect at the rate of 67 cents per hour."

JOINT STATEMENT OF FACTS: "Effective June 9, 1931, the position of Agent-telegrapher at Sunnyside, Utah, at rate of 62 cents per hour was abolished and thereafter a caretaker was employed at an allowance of \$15.00 per month.

"Request of the employes that position of agent-telegrapher be reestablished was denied by the Management."

POSITION OF EMPLOYES: "Exhibits 1 to 4 inclusive are attached to and made a part of this submission.

"There is an agreement in effect between the parties to this dispute bearing effective date as to rules of January 1, 1928 and as to wages dated as of August 1, 1937.

"On page 21 of the agreement effective January 1, 1928 is shown the position of Agent-Telegrapher at Sunnyside carrying an hourly rate of 62 cents.

"Sunnyside is located on a branch line 17.2 miles from Mounds, the main line station that has handled the accounting for Sunnyside since the substitution of a caretaker or a custodian for the Agent-telegrapher at Sunnyside.

"Some time August, 1935, Superintendent McPherson advised the Agent at Mounds that the Chief Clerk of the Utah Fuel Company at Sunnyside was receiving \$15.00 per month for taking care of the interests of the Denver and Rio Grande Western Railroad at Sunnyside.

"Our check upon the situation at Sunnyside indicates that the caretaker or custodian was handling bills of lading, accepting, checking and signing the name of the Agent at Mounds to these bills of lading. He orders cars, issues instructions to Conductors pertaining to switching and any other necessary information required by train crews, makes periodical checks of the yards at Sunnyside, for car record and demurrage purposes, furnishing such information to the Agent at Mounds by using the telegraphphone. He also receives telegrams addressed to train crews, telegrams covering other busi-

"The carrier has also an absolute right to abolish any position in the agreement provided the duties of the position are in fact abolished. What the carrier does not have the right to do is, under the guise of abolishing a position to transfer its duties to someone not covered by the agreement * * *."

"While the carrier saw fit to designate the employe performing the duties of Agent-Telegrapher at Sunnyside a 'caretaker,' the employes are positive that the duties and responsibilities placed upon this employe which are recited in this brief removes such employe from the designation or classification of a caretaker as promulgated by the Interstate Commerce Commission in its instructions to the carriers as to the occupational reporting of employes which instructions of the Interstate Commerce Commission define a 'caretaker' as an individual who takes care of the heating, lighting or otherwise policing the property of the carrier.

"It is the position of the employes that their statement of claim is fully supported by the actual facts surrounding this dispute and we request favorable consideration on the part of this board as a matter of equity and justice to the employes represented.

"All material used herein has been presented to the carrier representative either verbally or in writing."

POSITION OF CARRIER: "This claim originated at Sunnyside, Utah, a coal mining and coke point 17 miles north of Mounds, Utah. The latter point is a station on the main line of our Grand Junction Division, being 154 miles west of Grand Junction, Colorado, and 23 miles east of Helper, Utah.

"For many years Sunnyside was a prosperous coal mining and coke station. At one time the carrier had two assigned freight crews working between Soldier Summit, Utah, and Sunnyside, and in addition had an assigned switch crew at that point. Later business at Sunnyside began falling off, and first the assigned switch crew was taken off, then the assigned freight service was reduced, and one crew made a turn around trip daily except Sunday between Helper, Utah and Sunnyside. On January 15, 1931, following a continued decrease in business at Sunnyside, the assigned freight crew was ordinarily used only for trips Helper to Sunnyside on Mondays, Wednesdays, and Fridays, and Sunnyside to Helper on Tuesdays, Thursdays and Saturdays. This assignment is still in effect.

"June 9, 1931, as result of the decrease in business at Sunnyside, the position of Agent at that point was abolished and a caretaker placed in charge of the station.

"Within a few days after closing the agency at Sunnyside the telephone was moved from the station to the office of the Utah Fuel Co. The Chief Clerk to the Superintendent of the Utah Fuel Company is also the caretaker at Sunnyside, and this party telephones car orders to our agent at Mounds for the Utah Fuel Company, also for the Utah Rock Asphalt Company, and mails bills of lading to the agent at Mounds. Once in a great while the agent at Mounds might telephone a message to the Fuel Company for the train crew or engine watchman but this rarely occurs.

"The Carrier contends that the caretaker, who as hereinbefore stated is the Chief Mine Clerk, does not handle train orders or perform any other work which is ordinarily performed by telegraphers. The work he performs is work usually performed by mine clerks in connection with handling business with railroads, therefore, there is no merit or justification for the claim that the position of Agent-Telegrapher be restored at Sunnyside."

OPINION OF BOARD: The principles which govern the disposition of proceedings of this character have been frequently enunciated by this Board. It is well established that the carriers have a right to abolish positions included in agreements when there is no longer work to be performed in these

positions; but that where work does remain in connection with these positions, such work is subject to the agreement and must be performed by the class of employees to which the agreement applies. In other words, a position is abolished only when the duties incident thereto are in fact abolished; it is not abolished through the mere transfer of such duties, or some portion thereof, to employees not covered by the agreement, and the work involved under such circumstances continues to be subject to the agreement.

The Agreement between the parties bearing effective date of January 1, 1928 provided for the position of Agent-Telegrapher at Sunnyside, with an hourly rate of 62 cents. Effective June 9, 1931, this position was discontinued by the carrier, and thereafter a caretaker was employed at an allowance of \$15.00 per month. Whether or not the original position was in fact abolished as of June 9, 1931 does not appear of record, since the first protest reported therein was not made till October 3, 1936, and since the various checks upon the work of the caretaker were not made till the year 1939. But both the checks of the employees early in 1939 and the joint check of the carrier and the employees reported under date of July 10, 1939, disclose no work performed by the caretaker other than that involved in the performance of duties commonly assigned to agents or agent-telegraphers. This work, it seems clear, falls within the scope of the Telegraphers' Agreement; and since a continuing violation is involved, and no claim for reparation is made, the bulletining of an appropriate position for this service under the Telegraphers' Agreement will provide the redress to which the employees are entitled. It does not follow, however, that the identical position which existed at Sunnyside prior to June 9, 1931 must necessarily be restored. The essence of the violation consists in the performance by the caretaker of work which falls within the scope of the Telegraphers' Agreement, and the violation can be removed by restoring this work to an employee subject to that Agreement. It is obvious that this work is that of an agent or of an agent-telegrapher, depending upon the duties assigned to the position when reestablished, but the equities of the situation will be fully met if the carrier is left free to determine the nature of the position to be bulletined in accordance with the views expressed in this Opinion.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence of record discloses a violation of the Agreement.

AWARD

Claim sustained to the extent of requiring that an appropriate position be bulletined for the work at Sunnyside falling within the scope of the Telegraphers' Agreement, in conformity with the views set forth in the Board's Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1940.